

APPEAL PROCEDURES FOR USDA SPECIAL NUTRITION PROGRAMS



**Child and Adult Care Food Program (CACFP)
National School Lunch Program (NSLP)
Summer Food Service Program (SFSP)**

APPEAL PROCEDURES FOR USDA NUTRITION PROGRAMS ADMINISTERED BY SPECIAL NUTRITION PROGRAMS

REQUIREMENTS

Each State Agency shall establish an appeal procedure to be followed by an institution requesting a review of adverse action taken by Special Nutrition Programs (SNP). The procedures contained in the following sections comprise the official hearing procedures to be followed for Hearings relative to Child and Adult Care Food Program (CACFP), National School Lunch Program (NSLP), and the Summer Food Service Program (SFSP). The review/hearing procedures outlined below apply both to sponsoring organizations and institutions.

REASONS FOR REQUESTING A REVIEW

The Appeals and Hearing Section of the Office of Chief Counsel has been delegated the responsibility for conducting reviews of institutions aggrieved by the following actions:

CACFP, SFSP	1	Denial of a new or renewing institution's application for participation.
CACFP, SFSP	2	Denial of an institution/sponsoring organization's application on behalf of a Facility/site for participation.
CACFP, SFSP	3	Proposed termination of an institution's agreement.
CACFP, SFSP	4	Proposed disqualification of a responsible principal or responsible Individual.
CACFP	5	Suspension of an institution's participation.
CACFP, SFSP	6	Denial of an institution's application for start-up or expansion payments.
CACFP, SFSP	7	Denial of a request for an advance payment.
CACFP, SFSP	8	Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.
CACFP, SFSP, NSLP	9	Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission which is not an appealable issue.)
CACFP	10	Denial by SNP to forward to FNS an exception request by an institution for payment of a late claim or a request for an upward adjustment to a claim
CACFP, SFSP	11	Demand for the remittance of an overpayment.
CACFP	12	Any other section of Special Nutrition Program affecting the participation of an institution in the program or the institution's claim for reimbursement.
SFSP	13	Denial of a Food Service Management Company's (FSMC) application for a site.
SFSP	14	Denial of a FSMC application for registration.
SFSP	15	The revocation of a FSMC's registration.

NOTE: In the event that the hearing process was not invoked or the State Agency's action was upheld, requests for repayment by Special Nutrition Programs do not constitute grounds for review/hearing.

INSTITUTION'S RIGHT TO APPEAL

At the time of any adverse action, the institution/sponsoring organization must be advised in writing by notice of action, sent certified mail, return requested and must contain the following:

CACFP, SFSP	1	The basis for the adverse action.
	2	A Statement indicating the right to appeal.
	3	The address to which to route the appeal.
	4	A copy of the appeal procedures.
	5	The right to legal counsel or to be represented by another person.
	6	The right to file written information and the right to request a hearing (Appellant must state specifically if he/she wishes to have a hearing).
CACFP, NSLP	7	The right to file written information to be considered by the Review/Hearing Official within 30 calendar days from the date the notice of action.
SFSP	8	The right to file written information to be considered by the Review/Hearing Official within seven days after submission of the appeal for appeals relative to the Summer Food Service Program.
	9	The requirement that Summer Food Service Program appeals must include photocopy of the notice of action issued by SNP.

REQUESTING THE HEARING

A request for review/hearing must be submitted in writing to the Appeals and Hearings Section, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203, within the timeframes set out below:

TIMEFRAMES FOR REQUESTING REVIEW

NSLP, CACFP	The written request for review/hearing must be filed no later than 15 calendar days from the date of receipt of the Notice of Action (established by the Certified Mail Receipt.) The letter requesting review must specify if the appellant wishes to have a hearing in lieu of a review of written information submitted by the appellant and Special Nutrition Programs.
SFSP	Summer Food Service Program: The written request for review must be filed no later than 7 days from the date in which the Notice of Action is received (established by the certified mail receipt).

DENIAL OR DISMISSAL OF REQUEST FOR REVIEW

The Appeals and Hearings Section will not deny or dismiss a request for review except under the following circumstances:

1	The request was not received within the specified timeframe for requesting review.
2	The request was withdrawn, in writing, by appellant or its representative.

When the appellant has requested a hearing in lieu of a review of written information and fails to appear for the scheduled hearing, the decision will be based solely on the written information unless the appellant requests and is granted a rescheduling date by the Appeals and Hearings Section prior to the hearing date. There is no extension of timeframes granted in completing final administrative action on a case and due to the stringent timeframe mandated by Federal Regulations; a hearing will not be rescheduled except in the most unusual circumstances. Discretion for rescheduling a hearing lies solely with the Appeals and Hearings Section.

The Administrative Review Process

BEGINNING THE ADMINISTRATIVE REVIEW PROCESS

When a request for review is received, the Appeals and Hearing Section will request the Administrator of Special Nutrition Programs to verify whether or not the request has been filed timely. If not, the appellant or representative will be notified by letter from the Appeals and Hearings Section that the request for review is being denied.

THE ADMINISTRATIVE REVIEW/HEARING FILE

Upon notice by the Appeals and Hearings Section that a request for review has been filed and after a determination that the request was timely, Special Nutrition Programs will prepare a copy and forward the documentation to Appeals and Hearings Section of the following:

1	The Notice of Action.
2	All documentary evidence used to support the Notice of Action upon which the request for review is based.
3	A complete summary of the action taken, the basis for the action and the Child/Adult Day Care, Summer Food Service Program or the National School Lunch Program (CRE) regulation used in the decision to take adverse action.

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR REVIEW

NSLP, CACFP Within ten (10) calendar days of the receipt of request for review of the adverse action in the Nutrition Programs, except the Summer Food Service Program, the Appeals and Hearings Section must acknowledge the receipt of the request for either a review of the written information or a hearing.

STATUS OF ADVERSE ACTION DURING REVIEW/HEARING PROCESS

CACFP, SFSP The action taken by the Special Nutrition Programs remains in effect during the appeal process. However, unless participation has been suspended, the institution may continue to participate and receive program reimbursement for eligible meals served and allowable administrative costs incurred until its administrative review is completed.

PROCEDURE RESULTING FROM REQUEST FOR REVIEW OF WRITTEN INFORMATION

An appellant is afforded the right to an impartial review of the record and may submit written information to be considered by the Review Official.

PROCEDURE RESULTING FROM REQUEST FOR A HEARING

An appellant may choose to attend a hearing before an impartial hearing official and be represented by legal counsel at the appellant's expense.

SUBPOENA OF WITNESS

With the Acknowledgement of Receipt of Request for Review is sent to the appellant who has requested a hearing, he/she will be sent a form on which to subpoena witnesses and a copy of the Hearing File. This packet of information is sent certified mail, return receipt requested.

SCHEDULING THE HEARING

For CACFP and NSLP, the Hearing must be scheduled 10 calendar days in advance. The advance written notice of the time and place of the Hearing is sent by certified mail, return receipt requested.

If a Hearing has been requested for the SFSP, the appellant and the Special Nutrition Programs shall be provided with at least 5 days advance written notice sent by certified mail, return receipt requested, of the time and place of the Hearing.

THE HEARING OFFICER

The Appeals and Hearing Section will designate all Hearing Officers. The Hearing Officer must not have any personal interest in the case or have had any involvement in the contested action that resulted in the request for a Hearing.

CONDUCT OF THE HEARING

The Hearing will be conducted by a designated Hearing Official. The appellant may be represented by legal counsel or a designated representative. Special Nutrition Programs will be represented by legal counsel if the appellant has legal counsel or a designated representative.

The representative from Special Nutrition Programs will explain the basis for the adverse action and present any documentation (including witnesses) to support this action.

The appellant or representative will be given the opportunity to present witnesses, advance arguments, offer additional evidence and to question or refute any testimony or evidence. If the appellant is unable to present his/her evidence in a logical manner, the Hearing Official will assist. All parties will be given the right to cross examine witnesses. Questioning of all parties will be confined to the issue(s) involve. The Hearing Official has the Right to question participants any time during the proceedings.

THE REVIEW/HEARING DECISION

For CACFP and NSLP (CRE) prompt, definitive and final administrative action must be taken within 60 days of receipt of a request for a review/hearing. The hearing decision is based upon documentary evidence at the hearing, if conducted. This timeframe is an administrative requirement for the State Agency and may not be used as a basis for overturning the State Agency's action if a decision is not made within the specified timeframe.

For the SFSP, prompt, definitive and final action must be taken within 14 days of the receipt of the request for review but where applicable, not before the appellant's written documentation is received in accordance with the section of this policy entitled **Institution's Right To Appeal**. Within 5 working days after the hearing or within 5 days after receipt of written documentation, if no hearing is conducted, a decision must be rendered.

The Review/Hearing Officer must make a determination based solely on the information provided by the State Agency, the institution and the responsible principals and responsible individuals and based on Federal and State Laws, regulations, policies and procedures governing the program. The decision will be signed by the Administrator, Appeals and Hearings Section or a designated representative. The decision represents final administrative action by the Department and is binding by the Special Nutrition Programs of the Division of Childcare and Early Childhood Education. The decisions will be sent certified mail, return receipt requested.

NOTIFICATION OF HEARING DECISIONS

Once a hearing decision is rendered, both the appellant and Special Nutrition Programs will be notified in writing of the decision, sent by certified mail, return receipt requested. Special Nutrition Programs will notify the Appeals and Hearings Section within 10 days of any action taken by this Unit as a result of the hearing decision.

JUDICIAL REVIEW

Appellants not satisfied with an Administrative Hearing decision have the right to pursue Judicial Review through the Administrative Procedure Act.

A petition must be filed in the Circuit Court of the County of residence of the Petitioner or in Pulaski County within 30 days from the date the Administrative Hearing decision was received. Copies of the Petition are served in DHS and other parties of record by personal delivery or mail.

Within 30 days from the date of service of the petition on DHS (or additional time granted by the Court not to exceed 90 days total), the Office of Chief Counsel must transmit to the Court the original or a certified copy of the entire record of the Hearing under review.

Judicial Review is conducted by the court without jury and is confined to the record.